

4 - 12470 DPW

UNITED STATES DISTRICT COURT
for the
DISTRICT OF MASSACHUSETTS

FILED
NOV 23 2004 10:31 AM
CLERK'S OFFICE

| | | |
|--|---|--|
| PAUL L. GERMAIN, Plaintiff |) | UNITED STATES DISTRICT COURT for the DISTRICT OF MASS. |
| V. |) | Civil Action |
| JOHN DINUCCIO, and RONALD A. HEMEON, Defendants |) | No. <u>RECEIPT #</u> <u>JUDGE Colen</u> <u>AMOUNT \$ N/A</u> <u>MAGISTRATE</u> <u>SUMMONS ISSUED yes</u> <u>LOCAL RULE 4.1</u> <u>WAIVER FORM</u> <u>MCF ISSUED</u> |
| <u>PLAINTIFF'S COMPLAINT AND DEMAND FOR JURY TRIAL</u> BY <u>DATE</u> <u>11/23/04</u> | | |

Now comes the Plaintiff in the above-entitled matter and says:

General Factual Allegations

1. The Plaintiff, Paul L. Germain, is a resident of Georgetown, Massachusetts.
2. The Defendant, John DiNuccio, is a resident of Boxford, Massachusetts.
3. The Defendant, Ronald A. Hemeon, is a resident of Essex, Massachusetts.
4. On or about December 14, 2001, the Plaintiff was employed by the Defendant, John DiNuccio.
5. On or about December 14, 2001, the Plaintiff was employed by the Defendant, John DiNuccio, as a seaman, and a member of the crew of the F/V LISA ROSE.
6. On or about December 14, 2001, the Defendant, John DiNuccio, owned the F/V LISA ROSE.
7. On or about December 14, 2001, the Defendant, John DiNuccio, chartered the F/V LISA ROSE from some other person or entity.
8. On or about December 14, 2001, the Defendant, John DiNuccio, operated the F/V LISA ROSE.

9. On or about December 14, 2001, the Defendant, John DiNuccio, or the Defendant's agents, servants, and/or employees, controlled the F/V LISA ROSE.

10. On or about December 14, 2001, the Defendant, Ronald A. Hemeon, owned the F/V ALEXIS MARGARET.

11. On or about December 14, 2001, the Defendant, Ronald A. Hemeon, chartered the F/V ALEXIS MARGARET from some other person or entity.

12. On or about December 14, 2001, the Defendant, Ronald A. Hemeon, operated the F/V ALEXIS MARGARET.

13. On or about December 14, 2001, the Defendant, Ronald A. Hemeon, or the Defendant's agents, servants, and/or employees, controlled the F/V ALEXIS MARGARET.

14. On or about December 14, 2001, the F/V LISA ROSE was in navigable waters.

15. On or about December 14, 2001, the F/V ALEXIS MARGARET was in navigable waters.

16. On or about December 14, 2001, the F/V ALEXIS MARGARET and the F/V LISA ROSE were moored at the Jodrey State Fish Pier in Gloucester, Massachusetts.

17. On or about December 14, 2001, while in the in the performance of his duties in the service of the F/V LISA ROSE, the Plaintiff sustained personal injuries.

18. Prior to and at the time he sustained the above mentioned personal injuries, the Plaintiff was exercising due care.

Jurisdiction

19. This Court has subject matter jurisdiction over this matter pursuant to The Merchant Marine Act of 1920, 46 U.S.C. §688 et. seq.

20. This Court has subject matter jurisdiction over this matter pursuant to Article III, Section 2 of the United States Constitution, the General Maritime Law, and 28 U.S.C. §1331.

COUNT I

Paul L. Germain v. John DiNuccio

(JONES ACT NEGLIGENCE)

21. The Plaintiff, Paul L. Germain, reiterates the allegations set forth in paragraphs 1 through 20 above.

22. The personal injuries sustained by the Plaintiff, Paul L. Germain, were not caused by any fault on his part but were caused by the negligence of the Defendant John DiNuccio, his agents, servants and/or employees.

23. As a result of said injuries, the Plaintiff, Paul L. Germain, has suffered pain of body and anguish of mind, lost time from his usual work and pursuits, incurred medical expenses, and has sustained and will sustain other damages as will be shown at trial.

24. This cause of action is brought under the Merchant Marine Act of 1920, commonly called the Jones Act.

WHEREFORE, the Plaintiff, Paul L. Germain, demands judgment against the Defendant, John DiNuccio, in the amount of \$1,000,000.00, together with interest and costs.

COUNT II

Paul L. Germain v. John DiNuccio

(GENERAL MARITIME LAW - UNSEAWORTHINESS)

25. The Plaintiff, Paul L. Germain, reiterates the allegations set forth in paragraphs 1 through 20 above.

COUNT IV

Paul L. Germain v. John DiNuccio

(GENERAL MARITIME LAW/JONES ACT - INTENTIONAL/NEGLIGENT
FAILURE TO PROVIDE MAINTENANCE AND CURE)

31. The Plaintiff, Paul L. Germain, reiterates the allegations set forth in paragraphs 1 through 20 above.

32. As a result of the personal injuries described in paragraph 17 above, the Plaintiff, Paul L. Germain, has incurred and will continue to incur expenses for his maintenance and cure.

33. The Plaintiff, Paul L. Germain, has made demand upon the Defendant, John DiNuccio, for the provision of maintenance and cure.

34. The Defendant, John DiNuccio, has negligently, willfully, arbitrarily, and/or unreasonably failed to provide the Plaintiff with his maintenance and cure in a timely and adequate manner.

35. As a result of the Defendant's failure to provide the Plaintiff maintenance and cure, the Plaintiff has sustained and will continue to sustain damages, including without limitation, pain of body and anguish of mind, lost time from his usual work and pursuits, medical & hospital expenses, attorneys fees, and has sustained and will sustain other damages as will be shown at trial.

WHEREFORE, the Plaintiff, Paul L. Germain, demands judgment against the Defendant, John DiNuccio, in the amount of \$250,000.00, as compensatory damages for failure to pay maintenance and cure, together with costs, interest, and reasonable attorneys fees.

COUNT V

Paul L. Germain v. Ronald A. Hemeon

(GENERAL MARITIME LAW NEGLIGENCE)

36. The Plaintiff, Paul L. Germain, reiterates the allegations set forth in paragraphs 1 through 20 above.

37. On or about December 14, 2001, the Defendant, Ronald A. Hemeon, or the Defendant's agents, servants, and/or employees, used a gangway at the Jodrey State Fish Pier to slide tubs of herring bait to the F/V ALEXIS MARGARET.

38. On or about December 14, 2001, the Plaintiff slipped on said gangway while attempting to board the F/V LISA ROSE.

39. The personal injuries sustained by the Plaintiff, Paul L. Germain, were not caused by any fault on his part but were caused by the negligence of the Defendant Ronald A. Hemeon, his agents, servants and/or employees, in sliding tubs of herring bait to the F/V ALEXIS MARGARET.

40. As a result of said injuries, the Plaintiff, Paul L. Germain, has suffered pain of body and anguish of mind, lost time from his usual work and pursuits, incurred medical expenses, and has sustained and will sustain other damages as will be shown at trial.

41. This cause of action is brought under the General Maritime Law.

WHEREFORE, the Plaintiff demands judgment against the Defendant in the amount of \$1,000,000.00, together with interest and costs.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES

RAISED IN COUNTS I – V.

Respectfully submitted for the
the Plaintiff, Paul L. Germain,
by his attorney,



David J. Berg, Esq.
Latti & Anderson LLP
30-31 Union Wharf
Boston, MA 02109
617-523-1000

Dated: 11/22/04

CIVIL COVER SHEET

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

Paul L. Germain

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
Essex _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

David J. Berg, Latti and Anderson, LLP
30-31 Union Wharf
Boston, MA 02109
617-523-1000

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

| | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

| | | | | |
|---|---------------------------------------|----------------------------|----------------------------|----------------------------|
| Citizen of This State | PTF | DEF | PTF | DEF |
| <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
| Incorporated or Principal Place of Business in This State | | | | |
| Incorporated and Principal Place of Business in Another State | | | | |
| Foreign Nation | | | | |

IV. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|--|--|--|--|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment Of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 180 Other Contract <input type="checkbox"/> 195 Contract Product Liability | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input checked="" type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury | PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury <input type="checkbox"/> Med Malpractice <input type="checkbox"/> 365 Personal Injury <input type="checkbox"/> Product Liability <input type="checkbox"/> 368 Asbestos <input type="checkbox"/> Injury Product Liability | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark |
| <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights | CIVIL RIGHTS HABEAS CORPUS: <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ref. Inc. Security Act | SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIVW (405(g)) <input type="checkbox"/> 864 SSDI Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS v. Third Party 26 USC 7609 |
| <input checked="" type="checkbox"/> 1 Magistrate Proceeding | Original State Court Appellate Court Reopened | <input type="checkbox"/> 2 Removed from <input type="checkbox"/> 3 Remanded from <input type="checkbox"/> 4 Reinstated or (Specify) | Transferred from <input type="checkbox"/> 5 another district Litigation Judgment | Appeal to District <input type="checkbox"/> 7 Judge from <input type="checkbox"/> 6 Multidistrict |

V. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.) This is an admiralty personal injury case brought under the Jones Act and the General Maritime Law. _____

VII. REQUESTED IN COMPLAINT: UNDER F.R.C.P. 23

DEMAND \$1,000,000.00

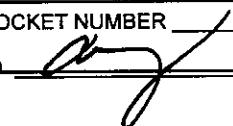
Check YES only if demanded in complaint:

JURY DEMAND: YES NO

VIII. RELATED CASE(S) (See Instructions)
IF ANY

DATE 11/22/07

JUDGE _____ DOCKET NUMBER _____

SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IPP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS1. Title of case (name of first party on each side only) Paul L. Germain V. John DiPuccio and Ronald A. Hemeon.

CLERKS OFFICE

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

10/23 NOV 23 A 10:31

I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.

II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. Also complete AO 120 or AO 121 for patent, trademark or copyright cases

III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.

IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.

V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO 7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES NO A. If yes, in which division do all of the non-governmental parties reside?Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME David J. BergADDRESS 30-31 Union Wharf, Boston, MA 02109TELEPHONE NO. 617-523-1000